

**PUBLIC PROSECUTOR**

**VS.**

**JOHNA ARU**

*Coram: Vincent Lunabek CJ*

*Mr Kent Massing for Public Prosecutor  
Mrs Jane Tari for Defendant*

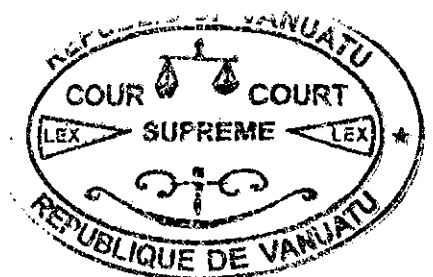
**SENTENCE**

1. Johna Aru, you appear for sentence. On 26 June 2017, you pleaded guilty to two (2) counts of Acts of indecency with a young person, contrary to section 98A of the Penal Code Act.
2. The offence were committed on 20<sup>th</sup> of April 2017. At the time of the offence, you were 14 years. The offences involve the touching of the vagina and buttock of a six (6) years old girl. You also showed her pornographic pictures and movies.
3. Section 98A defines the offence of act of indecency with a young person in this way:

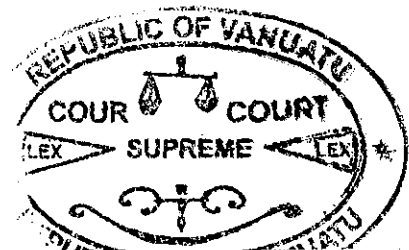
*"A person must not commit an act of indecency upon, or in the presence of another person under the age of 15.*

*Penalty: Imprisonment for 10 years"*

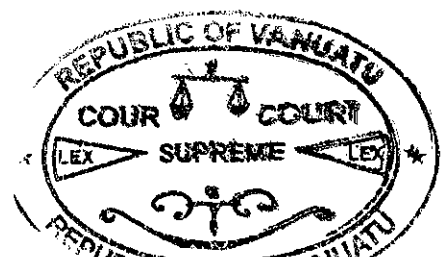
4. This offence is a serious offence as reflected by the maximum penalty of 10 years imprisonment imposed by law.
5. The brief facts of your offending is given by the prosecution as follows:



6. A complaint was made against you for the offence of Act of Indecency with a Young Person contrary to section 98A of the Penal Code.
7. The complainant is a little girl of six (6) years old and she attended kindy at Fanafo area on east Santo. She lives with her parent at Fanafo area. You are 14 years old at the time of the alleged incident. You also live with your parents. The complainant and you live on the same area known as Fanafo area.
8. The incident occurred on the 20<sup>th</sup> of April 2017. On that date, you asked the complainant to follow you to the cocoa plantation. At that time she was at home while her parents went to the garden. At the cocoa plantation, you indecently touched her buttock and vagina. You also rapped her vagina with your hands. After doing those acts, you then showed her pornographic movies and photographs. The complainant then responded by saying that her parents did not allow her to watch those kinds of bad movies. After all the acts done you both returned back to your place of residence.
9. On her return, she reported the incidents immediately to her mother. Her mother then asked further details of the incidents where she told her the story of what and how you did these acts on her.
10. Later the matter was reported to the police where you were arrested and kept in cell 6. You were in custody until you were released on bail.
11. You were cautioned and interviewed by the police where you admitted the allegations that were made against you.
12. When I sentence you today, I read the pre-sentence report, I also read and consider the submissions made by the prosecution and your defence lawyer.
13. In this case, the nature of and the circumstance of your offending are aggravated by the following factors:
  - The child is 6 years of age. She is vulnerable and she needs protection.



- On 20 April 2017, when you asked her to follow you in the cocoa plantation, she followed you. She trusted you. By doing the acts complained of, you broke the trust she had on you.
  - There was a degree of premeditation and planning in your offending. On 20 April 2017, when you called on the child girl to follow you at the cocoa plantation you have with you pornographic pictures and a set up (may be a mobile phone with recorded pornographic movies) you intended to show to the little girl and you did show her those pictures and movies.
14. A custodial sentence is appropriate in this type of offending. As I said early, it is a serious offence which attracts a maximum penalty of 10 years imprisonment. You are liable to be sentenced to that 10 years imprisonment as the maximum penalty.
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15. The circumstance of this case justifies a custodial sentence of 2-3 years imprisonment. A custodial sentence is justified for the following reasons:
- (i) Imprisonment tells the society and individuals about the gravity of this offending.
  - (ii) The public through the law disapproves this offending. The maximum penalty of 10 years imprisonment reflects this public disapproval of this type of offending.
  - (iii) Imprisonment for this type of offending is the appropriate type of punishment of the offender.
  - (iv) Imprisonment sentence deters others not to commit the same type of offence again in future.
  - (v) The children including girls in the community must be protected.



16. The report shows that your date of birth is 10 December 2002. You are now 14 years of age. You will be 15 years old in October 2017. You committed these offences when you are under 16 years of age.
17. The prosecution refers the Court to the position of the law.
18. Section 54 of Penal Code and Article 37 of the Convention on the rights of the child (Ratified) Act are in the relevant provisions for consideration in this case.
19. Section 54 provides:

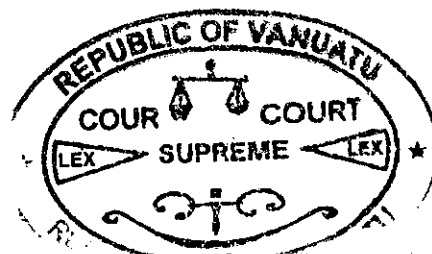
*(1) A person under 16 years of age is not to be sentenced to imprisonment unless no other method of punishment is appropriate.*

*(2) If a person under the age of 16 years of age is sentenced to imprisonment the Court must give reasons.*

20. The prosecution assists the Court by placing emphasis on the fact that this provision (s.54) needs to be read in conjunction with the Convention on the rights of the child as *"the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth"*; and Article 37 states that:

*... (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate of time.*

*(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with*



*is his or her family through correspondence and visits, save in exceptional circumstances.*

21. I agree and accept the prosecution submissions that s.54 is consistent with the Convention on the rights of the child and gives guidance as to how some aspects of s.54 should be interpreted and applied.
22. Your defence lawyer does not have issue with this aspect of the prosecution submissions and she conceded with the submissions of the prosecutions that you will be called upon for sentence with conditions to be imposed on you pending the sentence.
23. I consider the prosecution submissions, I also consider your lawyer submissions, I take note of the seriousness of the offence, your age, the circumstance of your offending, ~~I decide to sentence you and sentence you to 80 hours community work and 6 months probation under the conditions to be set by the Probation Officer.~~
24. You have 14 days to appeal this sentence if your are unsatisfied with it.

**DATED at Luganville this 30<sup>th</sup> day of June 2017.**

**BY ORDER OF THE COURT**

  
**Vincent Lunabek**  
**Chief Justice**

